



IN THE UNITED STATES PATENT & TRADEMARK OFFICE

In re Application of:

WOOD et al.

Examiner: Pollicoff, Steven B.

Appln. No. 10/804,458

Art Unit: 3728

Filed: 19 March 2004

For: SIDE-OPEN GUN CASE

* * *

SUPPLEMENTAL APPEAL BRIEF

To The Honorable Commissioner
of Patents and Trademarks
Washington, D.C. 20231

Dear Sir:

This Supplemental Appeal Brief is filed in response to the Advisory Action dated May 30, 2007, and further to the Appeal from the final rejection of pending claims 1-4 of the subject application. No claims stand allowed.

REAL PARTY IN INTEREST

The real parties in interest are the joint inventors, Michael Tate Wood and Bobby Lee Windham.

RELATED APPEAL PROCEEDINGS

None

STATUS OF CLAIMS

Claims 1-4 are pending in the application, and all of claims 1-4 stand rejected. The rejection of all claims 1-4 is appealed. Please see Appendix A for a copy of these claims under Appeal.

STATUS OF AMENDMENTS

On 14 February 2007 Appellants filed a Rule 116 Amendment that was not entered (by Advisory Action dated 19 March 2007), and so the status of the claims are as amended per Appellant's previous Amendment filed 13 September 2006.

SUMMARY OF CLAIMED SUBJECT MATTER

With reference to the published application no. 20050011786, the present invention is a gun case 5 that selectively encloses and securely bears the weight of a long-arm gun, and yet which can be *completely opened and inverted* for easy access and drying [page 1, para. 007 and FIGS. 1, 2 and 3]. The gun case is especially suitable for duck hunting and like trips in wetlands where the guns used collect moisture that is inevitably deposited in the gun case when the gun is stored therein. This is achieved with a double-layer fabric construct including a waterproof outside shell fabric 6, shown in FIGS. 1 and 2, integrally sewn to paraffin-impregnated inside lining fabric 7, the two fabrics being uniformly cut in an elongate form and sewn together as shown in FIG. 3, and reinforced along their periphery with a rolled fabric strip overlying the edges. [page 2, paras. 18-19 and FIG. 3]. The gun case 5 is generally patterned in the shape of a long-arm gun, likewise elongated with a narrowed end to accommodate a gun muzzle and a widened end to accommodate a gun butt. Padding is disposed between the outside fabric 6 and

the inside fabric 7 to cushion the gun as it is transported, and also to maintain the buoyancy of the gun case 5. [page 2, para. 19] Access for storing the gun in the gun case 5, as well as the full inversion feature noted above is accomplished by folding over the fabric construct lengthwise and sewing it closed at one end. The open side and end are configured with conjoined fold-over flaps 8, 9 that may be opened or closed as desired. [page 2, para. 20]. Specifically, one flap 9 is located along, and occupies a significant portion of the length of the gun case 5 and is movable between a closed, or open position allowing side access to the enclosure. [page 2, para. 20 and FIG. 3]. The other fold-over flap 8 is located at the end and this is likewise movable between an open position for allowing end-access to the enclosure. [page 2, para. 20 and FIG. 3]. The lengthwise flap 9 is secured first, preferably by opposing hook-and-loop patches. Then the end flap 8 is secured over the lengthwise flap by similar means to form a secure double-closure [see FIG. 1]. It is essential to function that the first flap 8 opening conjoins the second flap 9 opening, so that when both flaps are pulled back the gun case can be completely inverted. This way, the gun case 5 can be hung over a line for quick and convenient cleaning and/or drying out. [page 2, para. 20] (guns deposit damaging moisture and abrasive material into the case, which can be transferred back if the case is not thoroughly clean and dry). Additionally, the inside fabric 7 is impregnated with oil so that a small quantity of oil will be applied to a gun during the process of inserting and removing it from the gun case 5.

With particular regard to independent claim 1, the foregoing limitations appear as “a fabric enclosure formed by a fabric outer shell sewn to a padded inner liner and reinforced around a peripheral seam [page 2, paras. 18-19 and FIG. 3], said shell and padded inner liner being folded lengthwise and sewn together at one end to form an elongate enclosure permanently closed along one side and said end, and with conjoined sidelong and end access openings, [page

2, para. 18 and FIGs.1-3], a first foldover flap movable between an open position and a closed position releasably secured over said end access opening to prevent access to the fabric enclosure, and a second foldover flap movable between an open position and a closed position releasably secured over said sidelong access opening to prevent access to the fabric enclosure [page 2, para. 20 and FIG. 3], whereby when both of said first and second flaps are moved to their respective open positions to fully expose said conjoined sidelong and end access openings they allow the gun case to be quickly turned inside out for cleaning and/or drying. [page 1, para. 007 and FIGS. 1, 2 and 3]

The above constitutes a concise explanation of the invention as defined in independent claim 1 involved in the Appeal.

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The following is a concise statement of each ground of rejection presented for review.

There are five categorical ground of rejection as set forth as follows:

1st: Whether claims 1 and 2 are unpatentable under 35 U.S.C. §103 as obvious over Kolpin (U.S. Patent No. 2,901,018) combined with Jones (U.S. Patent No. 6,256,922)?

2nd: Whether claim 3 is unpatentable under 35 U.S.C. §103 as obvious over the Kolpin ‘018 patent and the Jones ‘922 patent as applied to claim 1, and further in view of Binney (U.S. Patent No. 4,257,464)?

3rd: Whether claim 4 is unpatentable under 35 U.S.C. §103 as obvious over the Kolpin ‘018 patent and the Jones ‘922 patent and further in view of Broun et al. (U.S. Patent No. 5,431,970)?

ARGUMENT

1st: The Examiner errs in rejecting claims 1 and 2 as unpatentable under 35 U.S.C. §103 as obvious over Kolpin (U.S. Patent No. 2,901,018) combined with Jones (U.S. Patent No. 6,256,922).

According to the Examiner, the Kolpin '018 patent discloses each and every element of claims 1 and 2 except: "a sidelong access opening selectively closeable with fold over flaps attached by hook and loop fasteners and a second fold over flap moveable between an open and closed position releasably secured over the sidelong access opening to prevent access to the fabric enclosure, whereby when both of said first and second flaps are moved to their respective open positions to fully expose said conjoined sidelong and end access openings they allow the gun case to be quickly turned inside out for cleaning and or drying." Kolpin '018 admittedly discloses a single layer fabric shell folded over, sewn shut along the sides, and closed at one end with a rubber bumper. The other end is selectively closable by a fold-over flap. There is no padded inner liner, nor conjoined sidelong and end access openings, nor any second (lengthwise) foldover flap. Clearly, this gun case cannot be quickly turned inside out for cleaning and/or drying. Nevertheless, the Examiner argues that Jones '922 bridges these gaps. Jones '922 shows a firearms case with a first fold over flap (Fig. 7 at ref 160 to the far left), an end access opening (Jones Fig 1 reference number 110), a second fold over flap (Fig 7 at ref 160 near ref 100) and a conjoined sidelong access opening (100) both with Velcro closures (Fig 7 reference number 160) attached. According to the Examiner, it would have been obvious to modify the case of Kolpin to include a side access opening, a second fold over flap and Velcro closures, as taught by Jones, for the purpose of easier encasing firearms of various sizes (Jones column 2 lines 29-30).

It is imperative to note at the outset that the configuration of the present invention is not

for the purpose of easier encasing firearms of various sizes as attributed by the Examiner and suggested by Jones (column 2 lines 29-30). Rather, the present device allows for complete inversion for quick, convenient cleaning and/or drying. Jones does not teach or suggest the complete inversion capability, does not appear capable of doing this given the tightly confined barrel tube, and in any case the Examiner has made no inherency argument and so has failed to make a *prima facie* case of obviousness for the recited “first and second flaps are moved to their respective open positions to fully expose said conjoined sidelong and end access openings they allow the gun case to be quickly turned inside out for cleaning and/or drying.” Moreover, to support a valid rejection under 35 U.S.C. 103 the cited art must suggest that it can accomplish the Applicant's results. Ex parte Tanaka, Marushima and Takahashi, 174 U.S.P.Q. 38 (Pat. Off. Bd. App. 1971). Kolpin '018 is a fairly traditional open-ended gun case, while Jones '922 is for the purpose of easier encasing firearms of various sizes (Jones column 2 lines 29-30). There is no teaching or inherent motivation to combine these two configurations for applicant's purpose, and indeed the features cannot be combined as suggested by the Examiner. Kolpin '018 is a bounded gun case while Jones '922 is a wrap-around sleeve, and so sewing a second flap onto Jones '922 would be purposeless and inoperable. There certainly is no inherent motivation or teaching or suggestion to combine these features, no mention of applicant's purpose, and even if the attempt to combine were made the result would be incoherent and non-functional. The Examiners cited combination is improper.

Moreover, even if the combination were made it still omits the essential structural elements of claim 1. Claim 1 requires a fabric enclosure formed by a fabric outer shell sewn to a padded inner liner and reinforced around a peripheral seam, said shell and padded inner liner being folded lengthwise and *sewn together at one end to form an elongate enclosure*

permanently closed along one side and said end, but with conjoined sidelong and end access openings. Since both openings must be formed by the shell and padded inner liner being folded lengthwise and sewn together at one end, the conjoined sidelong and end access openings that run substantially the length and width of the claimed gun case.

Kolpin '018 is has only one opening at one end, while Jones '922 is a jacket with an access opening 280 (FIG. 1) that permits insertion of a firearm plus access and use of the firearm's trigger 290 (FIG. 2). Neither Kolpin '018 nor Jones '018 are *sewn together at one end to form an elongate enclosure permanently closed along one side and said end, but with conjoined sidelong and end access openings.*¹ Claim 1 is patentably distinguished on this basis.

Moreover, the Examiner wrongly credits Jones '922 with disclosing a firearms case having a first fold over flap 160, an end access opening 110, a second fold over flap at 160 near 100, and a conjoined sidelong access opening 100. From this it is unclear what the Examiner indicates as the second fold over flap, since the reference 160 only refers to fasteners and 100 is the stock flap that the Examiner is equating to the sidelong access opening. Assuming that the Examiner meant flap 200, the Examiner still misconstrues the sidelong access opening 100, and ignores the requirement that the sidelong and end access openings must be conjoined. The stock of a firearm is the wooden or metal piece to which the barrel and mechanism of a rifle are attached, and thus the "stock flap" 160 is not "sidelong" at all and does not cover the entire side

¹ Note that the Examiner credits Kolpin '018 with disclosing shell and padded inner liner folded lengthwise and sewn together at one end. This is clearly not shown in the drawings or specification of the Kolpin '018 patent, and indeed at column 1, lines 69-71 Kolpin '018 suggests sewing two sides together at the margins. This is not equivalent to nor suggestive of the "shell and padded inner liner being folded lengthwise and sewn together at one end to form an elongate enclosure permanently closed along one side and said end". This claim element is essential since it contributes to the inversion capability and is therefore not to be discounted or overlooked, and the Examiner as failed to make a prima facie case of obviousness since he wrongly attributes it to Kolpin.

of the firearm. Jones' fold over flap at 160 folds between the ammunition clip and butt, and wraps around the butt to leave the trigger operable. It does not close off the sidelong opening, and is therefore not a "second foldover flap movable between an open position and a closed position *releasably secured over said sidelong access opening to prevent access to the fabric enclosure*" as required by claim 1. It appears that the Examiner is bootstrapping the sidelong access opening and second foldover flap, which is inappropriate since the two are inseparable features as is evident in claim 1. Again, the Examiner has failed to make a *prima facie* case of obviousness since he wrongly attributes claimed features to Jones, and in any case has not shown where Jones suggests a second flap releasably secured over the entire sidelong access opening *to prevent access to the fabric enclosure*.

In sum, Neither Kolpin '018 nor Jones '922 show the combination of 1) first fold-over flap 8 at the widened end of the gun case and securable by Velcro™ over front of the gun case thereby preventing access to the enclosure (Fig. 2); 2) a second flap 9 occupying a majority of the length of the gun case 5 and securable by Velcro™ over the front of the gun case (Figs. 1 and 2); and 3) a first flap 8 opening conjoining the second flap 9 opening. These features appear in both claims 1 and 2. They are synergistic features essential to the purpose, and they simply are not taught or suggested by either of the combined references. Thus, the entire essence of the present invention is missing from both Kolpin '018 and Jones '922 both in structure and function. Hence, claim 1 is patentably distinguished. Likewise, depending claim 2 is patentably distinguished.

2nd: The Examiner errs in rejecting claim 3 as unpatentable under 35 U.S.C. §103 as obvious over the Kolpin '018 patent and the Jones '922 patent as applied to claim 1, and further in view of Binney (U.S. Patent No. 4,257,464).

Claim 3 depends on claim 1 and incorporates the same above-described patentable limitations. Claim 3 also specifies that the padded inner liner includes a woven facing that is impregnated with a rust preventative to inhibit corrosion of a gun stored therein. The Examiner credits Binney '464 with a liner including a woven facing that is impregnated with a rust preventative to inhibit corrosion of a gun stored therein to arrive at claim 3. However, Binney '464 merely teaches a hydrophilic liner 12 that wicks moisture away to inhibit rust formation or other fouling if the product is made of an oxidizable material, or is amenable to sogging or mildewing, etc. This is not equal to a woven facing that is impregnated with a rust preventative (an oil impregnated inner fabric lining) to inhibit corrosion of a gun stored therein. Claim 3 is patentable on its own merit as well as for the above-described reasons set forth for claims 1 and 2.

3rd: The Examiner errs in rejecting claim 4 as unpatentable under 35 U.S.C. §103 as obvious over the Kolpin '018 patent and the Jones '922 patent and further in view of Broun et al. (U.S. Patent No. 5,431,970).

Claim 4 depends on claim 1, and further requires padding disposed between the fabric outer shell and padded inner liner to cushion the gun as it is transported, and to maintain the buoyancy of the gun case so that it floats even with a gun contained therein. The Kolpin '018 patent suggests a two layer construction with inner padding, and Jones '922 is a single layer. Neither reference suggests padding (closed cell foam) disposed between the fabric outer shell and padded inner

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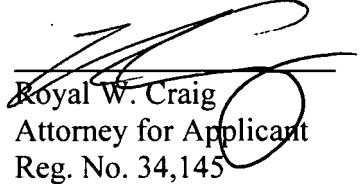
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liner to cushion the gun as it is transported. Consequently, claim 4 is patentable on its own merit as well as for the above-described reasons set forth for claims 1 and 2.

* * * *

For the reasons set forth herein, it is believed that the Examiner erred and that this application clearly and patentably distinguishes over the prior art and is in proper condition for allowance. Reversal is respectfully requested.

Respectfully submitted,


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APPENDIX A: CLAIMS APPENDIX

1. A gun case for storage of a long gun, comprising:

a fabric enclosure formed by a fabric outer shell sewn to a padded inner liner and reinforced around a peripheral seam, said shell and padded inner liner being folded lengthwise and sewn together at one end to form an elongate enclosure permanently closed along one side and said end, and with conjoined sidelong and end access openings, a first foldover flap movable between an open position and a closed position releasably secured over said end access opening to prevent access to the fabric enclosure, and a second foldover flap movable between an open position and a closed position releasably secured over said sidelong access opening to prevent access to the fabric enclosure, whereby when both of said first and second flaps are moved to their respective open positions to fully expose said conjoined sidelong and end access openings they allow the gun case to be quickly turned inside out for cleaning and/or drying.

2. The gun case of claim 1, wherein said conjoined sidelong and end access openings are selectively closable with fold-over flaps attached by hook and loop fasteners.

3. The gun case of claim 1, wherein said padded inner liner includes a woven facing that is impregnated with a rust preventative to inhibit corrosion of a gun stored therein.

4. The gun case of claim 1, further comprising padding disposed between the fabric outer shell and padded inner liner to cushion the gun as it is transported, and to maintain the buoyancy of the gun case so that it floats even with a gun contained therein.

APPENDIX B: EVIDENCE APPENDIX

None

APPENDIX C: RELATED PROCEEDINGS APPENDIX

NONE